

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(ALGERIA) ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(SWEDEN) ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(SENEGAL) ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(CROATIA) ORDER 2015

DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(BULGARIA) ORDER 2015

DRAFT INTERNATIONAL TAX ENFORCEMENT
(BRAZIL) ORDER 2015

Wednesday 21 October 2015

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

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| † Ansell, Caroline (<i>Eastbourne</i>) (Con) | Hepburn, Mr Stephen (<i>Jarrow</i>) (Lab) |
| † Burns, Conor (<i>Bournemouth West</i>) (Con) | † Law, Chris (<i>Dundee West</i>) (SNP) |
| † Double, Steve (<i>St Austell and Newquay</i>) (Con) | † McGinn, Conor (<i>St Helens North</i>) (Lab) |
| † Drax, Richard (<i>South Dorset</i>) (Con) | † McDonald, Andy (<i>Middlesbrough</i>) (Lab) |
| † Field, Mark (<i>Cities of London and Westminster</i>) (Con) | † Malthouse, Kit (<i>North West Hampshire</i>) (Con) |
| † Fox, Dr Liam (<i>North Somerset</i>) (Con) | † Marris, Rob (<i>Wolverhampton South West</i>) (Lab) |
| † Fysh, Marcus (<i>Yeovil</i>) (Con) | † Stride, Mel (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| Gapes, Mike (<i>Ilford South</i>) (Lab/Co-op) | † Wilson, Sammy (<i>East Antrim</i>) (DUP) |
| † Gauke, Mr David (<i>Financial Secretary to the Treasury</i>) | Katy Stout, <i>Committee Clerk</i> |
| Godsiff, Mr Roger (<i>Birmingham, Hall Green</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Wednesday 21 October 2015

[MR ADRIAN BAILEY *in the Chair*]

Draft Double Taxation Relief and International Tax Enforcement (Algeria) Order 2015

2.30 pm

The Chair: Is it the wish of the Committee that the draft orders be taken together?

Hon. Members: No.

Rob Marris (Wolverhampton South West) (Lab): It is a pleasure to serve under you, Mr Bailey—the first time that I have had the pleasure, I believe. I would prefer, with your permission and that of the Committee, if we dealt with the draft orders on Algeria, Bulgaria, Croatia and Sweden together—I appreciate that that will still lead to four votes—and then, in separate debates, the draft orders on Senegal and on Brazil. Of course, the Minister might have different views on what is appropriate.

The Financial Secretary to the Treasury (Mr David Gauke): I have no objection to that.

The Chair: I should make it clear that debate on the collective group of statutory instruments will continue for up to an hour and a half, although they will be voted on separately. There is then up to an hour and a half on the other two instruments afterwards.

Rob Marris: Do I understand it correctly, Mr Bailey, that in theory the proceedings could run for three hours? Or is it 90 minutes on each debate?

The Chair: It could run for four and a half hours.

2.31 pm

Mr Gauke: I beg to move,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Algeria) Order 2015.

The Chair: With this it will be convenient to consider the draft Double Taxation Relief and International Tax Enforcement (Sweden) Order 2015, the draft Double Taxation Relief and International Tax Enforcement (Croatia) Order 2015 and the draft Double Taxation Relief and International Tax Enforcement (Bulgaria) Order 2015.

Mr Gauke: Thank you for your guidance, Mr Bailey. I am immediately beginning to regret my assent to that slight rearrangement, but I am sure that all parties will work in a constructive way. Who knows, we might not be here for the full four and a half hours.

Let me start with Algeria. We have a first-time agreement that conforms closely to our expectations and to what Algeria has agreed with parallel countries. It will deliver

substantial benefits for UK companies and individuals. The rates of withholding taxes for dividends, following the OECD model, are 5% for direct investors and 15% for portfolio investors. The maximum rates for interest and royalty payments are 7% and 10%, respectively. As is common with a developing country, we have agreed a provision that allows the taxation of services in the country in which they are performed, provided that they last for more than 183 days.

The treaty contains our usual anti-treaty shopping provisions, the latest OECD exchange of information article and an arbitration provision to assist the mutual agreement process, which will be an important comfort for UK companies investing in Algeria. There is also an article providing for mutual assistance in the collection of taxes.

Bulgaria's treaty policy favours a higher level of source state taxation than is our preference. We have accommodated that to a certain extent and have obtained a similar agreement to those that Bulgaria has signed with other countries in the past five years.

On interest, there are exemptions from taxation at source on interest paid to financial institutions, pension schemes and fellow group companies. On royalties, the European Union interest and royalties directive, which took effect in Bulgaria in January 2015, will eliminate tax on intra-group payments. Dividends paid to UK companies will get the zero rate introduced by the EU parent and subsidiary directive, which took effect in Bulgaria in January 2015, and there is an important carve-out giving the zero rate to pension schemes. In most other respects, the treaty follows our preferences, especially in the adoption of anti-avoidance rules that prevent the treaty from being exploited by residents of third countries.

Let me now turn to the double taxation agreement with Croatia. This is a first-time, comprehensive DTA with Croatia. It will replace the existing 1981 treaty with Yugoslavia. Croatia's treaty policy favours a higher level of taxation at source than is our preference. We were able to agree to that, however, as it has become a consistent feature of Croatia's recent approach and, as is the case with Bulgaria, the combination of EU directives and the features that Croatia conceded to us will give us a result with which we are pleased. The treaty notably contains a withholding tax exemption for dividend payments to pension schemes.

We also achieved all our special provisions, such as our anti-treaty shopping measures, which prevent the UK from being used as a conduit, and a measure protecting our taxing right over real estate investment trust dividends.

Turning to Sweden, our existing treaty with Sweden dates from 1983 and although it is working reasonably well it is out of date by modern standards. In particular, the dividends article is defective and anti-treaty shopping provisions are also missing which, combined with Sweden's general lack of withholding taxes, opens up the possibility of abuse.

The new treaty preserves the positive features of the existing one and includes most of the improvements that we were seeking. In particular, the 5% rate for portfolio dividends is maintained and we will now be able to tax real estate investment trust distributions at our preferred rate of 15%. On pensions, we accommodated Sweden's wish for more extensive taxation at source, as

we have done with Norway and Iceland. We now have a modern treaty, improvements to the dividends article and protection against abuse.

I hope those explanations are helpful to the Committee. I commend the draft orders and am happy to answer any questions that hon. Members might have on the provisions.

2.36 pm

Rob Marris: On one level I must congratulate the Government on apparently negotiating extremely well for our country, but on another level I want to probe the Minister a bit.

If one looks at the four agreements with the four separate sovereign states, the agreements and the wording within them are very similar visually. Clearly, it is unlikely that the Bulgarians, for example, use our fill-in-the-blanks model—although I appreciate that negotiating such treaties is more sophisticated than that—but the format seems to be a UK one. Part of that is down to how the agreements are laid out in UK statutory instruments—the ones we are discussing today—but part of it is because the party negotiating with us apparently agreed to the format and the articles, even in that order.

There are of course some minor variations, as well as some major variations in terms of the percentage withheld and so on. There are minor variations, for example, article 16 of the Algeria order covers artistes and sportsmen. By the time we get to article 16 of the Bulgaria order—it is a common format—the reference is to entertainers and sportsmen. I am genuinely not asking the Minister why there is a difference. I am saying that there appears to be a common format.

The question asked among Opposition Members, therefore, is whether in one sense—I stress the caveat “in one sense”—our Government did too good a job in having the whip hand in negotiating with and persuading four disparate countries, four sovereign states, to adopt the UK format for a double taxation agreement. That brings into play the question, to which we will return when discussing the draft order on Senegal, of whether there was an imbalance in the power and resources of the negotiating parties.

I appreciate that that is unlikely to be the case with Sweden. It is less likely to be case with Croatia and more likely, with all due respect—it is a sovereign state—to Algeria, given its resources. I wish to probe the Minister on that imbalance. How come we have this common format that suits us? It makes things easy for us as parliamentarians, because article 16 is broadly the same in all four. We got our format, so that suggests to me that, broadly speaking, we got our content.

That is good for our country, but was there undue pressure and too much of an imbalance in negotiating power and resources in favour of our country, contrary to its heritage under this Government, the previous Government and the Labour Government before that? This country has always tried not to over-use the undoubted power and resources that we have in these sorts of bilateral negotiations.

2.40 pm

Mark Field (Cities of London and Westminster) (Con): I wish to make a brief contribution. I will leave it to the Minister, of course, to answer the issues raised by the

hon. Member for Wolverhampton South West, but in part it is an EU convention to use this particular template, rather than an exercise of British fiscal power. One could almost ask—from my slightly different political standpoint—a somewhat different question, as I am someone who favours the idea of tax competition. I can see the advantage of having double taxation treaties, particularly given the importance of the UK as a global capital. There are a significant number of entertainers, artistes, sportsmen and others from Sweden, Croatia, Algeria and elsewhere, many of whom are constituents of mine but some may, of course, be constituents of the hon. Gentleman.

Rob Marris: The hon. Gentleman is not an Abba fan, is he?

Mark Field: I should perhaps say that, in my latest role as vice-chairman of the party, I spent this weekend in a place I suspect I will never go to again, Karlstad in the middle of Sweden, attending our sister party’s party conference. I can assure the hon. Gentleman that the exports of Sweden are not limited to Abba and it has to be said that the Swedes have a great love for our country. Something that I know will impress the hon. Gentleman is that there is a great passion from the Swedes that we should stay in the European Union—

The Chair: Order. I appreciate that consideration of such instruments sometimes benefits from some lighter interventions, but I would not wish those to take a disproportionate amount of time from the debate.

Mark Field: I take on board your view, Mr Chairman, and you can be assured that the light interventions will be light in time terms as well.

There is also an argument that having these double taxation treaties militates away from the idea of tax competition. In other words, we are standardising our tax across the globe. It makes a hell of a lot of sense, particularly in the three of the four cases we are dealing with of EU nations, that we should be looking to try and do that. It would be wrong in my view to assume that we are playing the whip hand and utilising our relative economic strength in this regard. It is healthy that we try to standardise these documents as far as possible. It is a good argument to Croatia and to future members of the European Union that they have similar treaties to those that apply to Sweden and I suspect to many other nations where we have double taxation treaties. This is a healthy development. I will now sit down and hopefully this will be my last contribution on this afternoon’s matters.

2.42 pm

Mr Gauke: I thank the hon. Member for Wolverhampton South West for his first contribution and my right hon. Friend the Member for Cities of London and Westminster for his first and perhaps last contribution of the afternoon.

First, I will address the point about format. I understand why the hon. Gentleman raised the point but let me reassure him that all UK treaties follow to a large extent the OECD model, as is the case for most treaties throughout the world, which means that all the treaties appear very

[Mr Gauke]

similar to each other. The hon. Gentleman would find that treaties that did not involve the UK would also look similar, so it is not so much the UK asserting a particular UK model. This is very much the international rule.

Rob Marris: Would that be the case with Algeria, which of course is not a member of the European Union and I believe is not a member of the OECD? Would it still, as far as he knows, tend to follow that common OECD format as a template?

Mr Gauke: Yes, that is very much my understanding. I confess I have not studied Algerian double taxation treaties not involving the UK perhaps as much as I might have done, but my understanding is that this model is used very broadly. Clearly there are advantages in terms of standardisation of the model for these treaties. It comes back to the point made by my right hon. Friend the Member for Cities of London and Westminster that double taxation agreements of this sort—tax treaties—help provide greater certainty to businesses. That greater certainty does help encourage foreign direct investment into countries that have treaties. The UK certainly benefits from a very extensive network of tax treaties, but developing countries also benefit from the certainty provided—the signal that a country is open for business. That is mutually beneficial.

I am aware that some critics of DTAs focus on the potential for abuse that they create, either through the creation of opportunities for non-taxation or the flow of benefits to unintended recipients, but such criticisms ignore the fact that measures can be agreed that protect against abuse, and the UK routinely agrees such measures with developed and developing countries alike. I would speak in defence of these tax treaties, from the point of view of both the UK and developing countries.

I suspect we will return to the role of the UK and the extent to which these matters are something of a compromise. I would just make the point that with any of these treaties, it is not realistic to expect any one party to a treaty necessarily to get their way on everything. These are matters on which there is likely to be some compromise.

I touched upon the fact that a lot of countries would place greater reliance on source income as opposed to residence as a test of where the taxable rights should fall. There tends to be a compromise reached, where an acceptable one can be. After all, each of the treaties before us this afternoon is the result of two sovereign Governments agreeing that it is in their mutual interest to sign it. We believe that a tax treaty can be a powerful tool for development because of the certainty it gives to international investors.

I hope those points are helpful to the Committee, Mr Bailey. I suspect I may refer to them again later this afternoon. I hope that, on those points of clarification, the Committee will support the four draft orders.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Algeria) Order 2015.

**DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(SWEDEN) ORDER 2015**

Resolved,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Sweden) Order 2015.—
(Mr Gauke.)

**DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(CROATIA) ORDER 2015**

Resolved,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Croatia) Order 2015.—
(Mr Gauke.)

**DRAFT DOUBLE TAXATION RELIEF AND
INTERNATIONAL TAX ENFORCEMENT
(BULGARIA) ORDER 2015**

Resolved,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Bulgaria) Order 2015.—
(Mr Gauke.)

Draft Double Taxation Relief and International Tax Enforcement (Senegal) Order 2015

2.49 pm

Mr Gauke: I beg to move,

That the Committee has considered the draft Double Taxation Relief and International Tax Enforcement (Senegal) Order 2015.

This is the first time that we have had a double taxation agreement with Senegal. Senegal has only 10 other DTAs, so it was pleasing that it agreed to negotiate one with the United Kingdom. As a developing country, Senegal, not surprisingly, wished to retain a substantial level of source state taxation. The DTA therefore permits the taxation of services when performed in the country for more than 183 days. However, Senegal agreed reductions in withholding taxes on passive income, in particular restricting withholding tax on dividends payable to direct investors to 5% and that on leasing payments to 6%. The DTA also includes the latest OECD exchange of information and assistance in the collection of taxes articles. I hope the Committee will support this order.

2.50 pm

Rob Marris: I am interested to learn from the Minister that this is the 11th double taxation agreement—or DTA, as I like to call such agreements—that Senegal is entering into. I imagine that it has already been signed, and that we in the United Kingdom are now to sign it off, as it were, through our democratic processes, but the treaty raises a number of broader issues that I wish to explore. In that regard, I am indebted to assistance I have received from ActionAid, an independent charity that has existed since the 1970s and which takes considerable interest in such matters. Its broad concern, which I share, is that, on occasions, the UK might be, as I suggested in the earlier debates, exploiting its greater negotiating power. I am not saying that we are, but I wish to explore that point, with the Minister's help.

Senegal is a much poorer country than us; it is a former colony of France and it is in Africa, obviously, and therefore not in the European Union. Will the Minister therefore take me through some information? He may not have it all, with all due respect to his great knowledge and the great assistance he has, and may wish to contact me later in writing. I fully understand that. This is not an attempt to ambush him, as he knows, or an attempt to grandstand; it is an attempt to elicit information and on the basis of that information I will make up my own mind, and my hon. Friends will make up theirs, as to whether we think the order should be accepted, in lay terms, in this Committee.

My first question is: what co-ordination was there between Her Majesty's Revenue and Customs, the Treasury and DFID on this arrangement? There is a bit of an overlap here. We have an obligation to assist developing countries, and this Government fulfils that obligation with a commitment to spend 0.7% of GDP on international aid, which I salute. I know that it is not always easy for Conservatives to explain that commitment to their supporters, and I salute the Government for continuing the work done by the previous Labour Government and the coalition Government in saying that they think this is the right thing to do in our place in the world, in

expression of our compassion and so on. However, there is an interplay with a developing country when we create a double taxation agreement between DFID and the Treasury, in this case because the double taxation may have an effect on the development of Senegal. Has DFID—of course, the Minister is not directly answerable for that Department, but he may know—or the Treasury carried out any kind of assessment on the likely development impact of the DTA within Senegal? I appreciate that he is a Minister of Her Majesty's Government, not of the Government of Senegal, but he may have some information on that which would be helpful to the Committee.

More broadly, when the United Kingdom is understandably negotiating and discussing what may or may not—if negotiations do not work—become double taxation agreements with developing countries, presumably Her Majesty's Government have various objectives in mind. These will primarily, of course, be objectives to the advantage of our country, the United Kingdom, but we have a history of looking at things from a broader perspective—again, something I encourage this Government to continue to do—and there can be an interplay between what one might call Treasury objectives and DFID objectives, which have to be refracted through the UK Government as a whole. I want some indication of what the UK's objectives are when negotiating treaties with developing countries. There is a fear, which I share, that if mishandled, double taxation agreements could give too much power to multinational corporations.

We all know that some multinational corporations do not pay as much tax as many of us—including the Government, on occasion—would wish them to. The Government are disappointed at the level of tax paid by some multinational corporations, and we see that in the Finance Bill again this year—the Finance Bill No. 2, as it were. It happened in Finance Bill No. 1 in March as well; the Government brought in measures which Members on the Labour Benches broadly supported to lessen anti-avoidance that is often, but not always, carried out by certain multinational corporations.

If such organisations can do that to the United Kingdom, it crosses one's mind to ask what they can do to a country such as Senegal that does not have the resources that are available to us, not only in financial terms but in expertise. If mishandled—I am not saying that the agreement has been mishandled; I am probing it—such agreements could be to the disadvantage of a developing country and to the great advantage of a multinational corporation which understandably—let's face it, it is capitalism—would prefer to pay less tax, whether in Senegal, the United Kingdom or elsewhere. That is an aspect of tax competition about which I am deeply uneasy, even though the right hon. Member for Cities of London and Westminster might be less uneasy than I am in terms of his political inclinations and the constituency, in both senses of the word, which he represents. I am uneasy about that.

It could be that the agreement contains restrictions that are more disadvantageous—or less advantageous—to Senegal than they are to us. The contents of the agreement could end up de facto setting maximum tax rates for Senegal in a sense through the back door through a double taxation agreement. Again, this is something for which Her Majesty's Government are not directly responsible, but they ought to bear it in mind when

[Rob Marris]

negotiating such things. Such a treaty could narrow the scope of taxable earnings within Senegal, again lessening its tax base. If mishandled, or handled in a way which I would not regard as acceptable, it could limit the sovereign discretion of a country such as Senegal to increase its own taxes, if it chose to do so. It might find that its hands were tied by a double taxation agreement which it had negotiated with a tenth, eleventh or twelfth country from a position of weakness.

As I understand it, Senegal is a developing country. Let us be clear what we are talking about here. Like many developing countries, Senegal is more reliant than we are on revenue for the Government from corporate taxes. The income tax writ in many developing countries, for all kinds of reasons that I think would be obvious to members of the Committee, does not often run deeply or widely. When people are poor and do not keep paper records, it is difficult to collect income taxes, payroll taxes and so on. It is easier to use corporate taxation to fund the state in a country such as Senegal, whereas the balance is rather different in an advanced industrial country such as ours. Nearly 50% of the population of Senegal live below the poverty line. Fortunately, the figure is far lower in our country. Similarly, we have a far higher figure for life expectancy; it is around 80 years for men and women combined. In Senegal it is around 63 years. On the human development index, my understanding is that Senegal is 163rd out of 187.

We are talking about a very poor country in world terms with low investment, currently, from the United Kingdom. Such investment is in the order of perhaps £1 million or less, although the figures are not entirely clear. I have been told that Senegalese investments in the United Kingdom are about £1.5 million at the current rate. That figure does not surprise me—just because it does not surprise me does not mean it is accurate—but I think most Members present would find that figure not surprising.

I am sure that we wish to build up bilateral trade and bilateral investments between the United Kingdom and Senegal. It is never going to be a very major trading partner of the United Kingdom but we play in the world and earn our living in the world and we wish to have these kinds of agreements and arrangements with many countries to increase bilateral trade as long as it is to our advantage and, one hopes, to their advantage. Unless it is to both countries' advantage, ultimately that kind of relationship goes nowhere.

Will the Minister say whether the Government have done an assessment of the likely impact on trade and mutual investment between the two countries, to which the double taxation agreement would contribute by setting a climate of greater certainty for both states? Will he indicate—I appreciate that he may not be able to do so for reasons of confidentiality—which UK companies, if any, approached Her Majesty's Government and said, "We think that a double taxation agreement would be advantageous"? That might give us a greater insight into the arrangement that is being proposed and the context in which it is being proposed.

Will the Minister also tell us whether the UK Government are aware of any analysis of the potential cost, or indeed the potential increase in revenue, to the Senegalese Exchequer that may result from the agreement?

I stress that I quite understand that the Minister is answerable for Her Majesty's Government, not for the Government of Senegal, but he may be aware of such research into the Exchequer effect in Senegal. If he is, it would be helpful if he were able to share that with the Committee. Similarly, it would be helpful if he knows and can share with the Committee briefly what effect the measure might have on the general level of prosperity in Senegal, given that for our country—and, one suspects, for Senegal, although I am not an expert on the country—trade, if handled properly, tends to increase prosperity, and double taxation is part of an overall trading agreement between the two countries. Of course, trade is not guaranteed to increase prosperity, and it has to be handled properly. We are not going to debate what "handled properly" means, but I am trying to put the matter in context.

One would hope that the agreement would have an effect on the prosperity of those whom we represent here in the United Kingdom. With all due respect to Senegal, given its size and the size of its economy, the agreement will probably not have a major effect on the United Kingdom economy, but it may have a more marked effect on the prosperity of Senegal. Some fear that it might have a deleterious effect, if, to put it somewhat in the vernacular, the big bad corporations get their way and pay less tax in Senegal. I do not say that that will be the case; it is simply something that I want to explore and get a little clarity on.

The feeling of ActionAid, which knows more about the matter than I do, is that this is one of the more restrictive treaties that the United Kingdom has signed. We debated earlier in relation to Algeria—another less developed economy in Africa that is not a member of the European Union and so on—the format of such treaties and the tendency of countries that are not in the EU or the OECD to look at the OECD template as a starting point. That seems to have happened here. Inasmuch as I am aware of them, I share ActionAid's concerns. I do not know whether those concerns are groundless; with due respect to ActionAid, it does not believe them to be. ActionAid—and I, as a Member of the House—would like clarification on whether the agreement is less advantageous than similar agreements signed by other developing countries.

The Minister is not an expert on other developing countries, and I do not ask him to be. He is answerable, as I have said repeatedly, for Her Majesty's Government and no other Government. However, he might have some information and examples to help us. The treaty and the articles contain the definition of a "permanent establishment." The definition in the statutory instrument, following on from the treaty, extends less flexibility, which makes it more restrictive for Senegal than some other agreements. For example, to quote ActionAid,

"the treaty is unusual in that activities associated with a building site in Senegal conducted by a British firm will not be taxable in Senegal, nor will royalties paid to the UK for radio and TV programmes broadcast in Senegal."

I appreciate that there are probably not very large numbers of UK radio and television programmes broadcast in Senegal, although there might be regular ones, such as Premier League football. As I understand it from ActionAid, both of those provisions have been included in about 90% of tax treaties signed by developing countries since 1970, but omitted from this one. The Minister may

not have this information at his fingertips today, but with the assistance of the Treasury he will be aware of the other double taxation treaties the United Kingdom has signed with developing countries—we have dealt with Algeria already today—and there does appear to be a difference.

There is a concern that this agreement does not include a clause that allows Senegal to tax fees for technical services paid to the UK. It is suggested that Senegal wanted that provision, but it is not there. As the Minister said in the earlier debate, “In any negotiations, some things you get, some things you don’t.” He did not use these words, but it takes two to tango. I spent a lot of my working life as a negotiator as a solicitor, so I understand that there has to be give and take, but one has to be alert morally, as a rich country, to that imbalance in negotiating.

I may be wrong—I appreciate that the Minister was not present for the blow-by-blow investigations, but he might have some background information—but it appears that, in regard to technical services, we got our way and Senegal did not. If that be the case, perhaps the Minister will confirm that and indicate where Senegal, on a quid pro quo, got its way and we did not. There has to be give and take. The suggestion is that there has been some “give”, so I want to explore what the “take” might be.

As I understand it from ActionAid, the Senegal statutory rate of tax is 16%, but here it is 10% on the withholding tax—quite a large discrepancy if those figures are correct. Is the Minister aware of how that difference came about? Again, there is some “give”, so was there some “take” to balance the scales? It is feared that that will help multinational companies to lessen the tax they pay in Senegal by funding companies’ commercial operations through intra-company loans—an activity known to many of us. That has become more and more common; in fact, we discussed that in the Finance Bill Committee this year in the room next door.

Similarly, I am told that, on royalties, there is a difference between the statutory rate in Senegal of 20% and the withholding tax of 10% in the agreement. It could be that I do not understand enough about taxation. As the Minister and other members of the Committee know, I am not an accountant, but when one sees that kind of discrepancy, a lightbulb goes on and a question arises.

To sum up, there is concern that there may have been too much “give” by Senegal and not enough “take” and that that might have been driven by the imbalance in negotiating resources and power between the two sovereign states. I hope that the Minister will shed some light on that.

3.8 pm

Mr Gauke: I thank the hon. Gentleman for his questions. I very much appreciate that he is probing the Government, as indeed is his role, and I am grateful that he indicated to me in advance that he would probe along those lines.

We do have to bear in mind that such treaties are not a zero-sum game. The hon. Gentleman did not claim that it is, but we have to bear in mind that a concession by one party to the other may well be to their mutual benefit. That is the nature of a double taxation agreement: it helps to provide greater certainty, for example, for businesses investing in a particular country. It prevents

double taxation, which would act as an impediment to foreign direct investment. As we touched on in our earlier debate, that is why these treaties help to smooth the flow of investment funds and help countries to trade more closely together, which is an important source of increased prosperity. I make that general point.

More specifically, regarding the Senegal treaty that we are considering today, I hope that the hon. Gentleman will be reassured by the fact that discussions on this DTA commenced after an approach from Senegalese officials and not after lobbying by UK multinationals—not that such lobbying would necessarily be wrong. Nevertheless, the process was initiated by the Senegalese. The treaty will provide benefits for UK companies investing in Senegal, and Senegal will also benefit from such investment as its economy develops. Indeed, it is important for a country to be clearly open for business and to provide a tax regime that attracts investment rather than deterring it.

I will touch on some of the specific points that have been made. The hon. Gentleman made a point about the difference in withholding tax. The treaty reflects a compromise after extensive discussions. The balance of source state taxation versus residence state taxation reflects that compromise while providing certainty to businesses, which will encourage investment in Senegal. Cross-border trade will be enhanced, increasing taxable income in both states.

The hon. Gentleman raised a concern about UK multinationals exploiting the treaty to the disbenefit of Senegal. Of course, the Government are well aware that treaties can be exploited by some multinationals, but this treaty contains measures that will allow aggressive exploitation to be challenged by both states. Senegal has subjected this treaty to its legislative procedure, just as we are doing here now, and more widely, non-governmental organisations have acknowledged that the transparent nature of treaties is a positive factor for developing countries. I make the point again that the Senegalese Government initiated the discussions about this treaty and have agreed to the treaty.

On the economic and revenue effects of DTAs, they remove barriers to cross-border trade and investment. The effects of a specific agreement depend on the extent to which activities change as a result of it. Given the long timescales involved, the complex and shifting interactions with domestic law, the unpredictable behavioural effects and the lack of a sensible comparator, it is not possible to provide meaningful estimates of the revenue effects of DTAs, and successive Governments have never attempted to do so. I remember asking questions about the effects of a DTA when I performed the role that the hon. Gentleman is performing now, and I never received an answer. In truth, it is difficult to come up with a sensible number. Overall, however, DTAs are beneficial to the world economy and to participants in them.

A couple of other specific points were made about the Senegal treaty. The hon. Gentleman asked why it does not permit Senegal to tax supervisory activities connected with building sites, but it does allow that. The threshold for the taxation of profits arising from building sites is that the activity be carried on in the country for six months. While supervisory activities are not mentioned specifically in the treaty, the OECD

[Mr Gauke]

commentary on the relevant provision makes it clear that supervisory activities associated with the erection of a building are included in the taxable activity of the building site.

As for why the treaty does not permit the taxation of royalties paid for radio and television programmes broadcast in Senegal, it provides that generally, royalties arising in Senegal can be taxed in Senegal at a rate not exceeding 10%. The definition of royalties includes payments for the use of, or the right to use, any copyrighted literary, artistic or scientific work, including cinematographic films. The OECD commentary on the provision makes clear that cinematographic films include material for TV broadcast. If the material to which the payment relates is subject to copyright and the payment is for the use of the copyright, Senegal may tax the payment. I hope that provides some reassurance.

Rob Marris: I congratulate the Minister on the width of his expertise on taxation in Senegal on cinematographic matters. It is most impressive.

Mr Gauke: I am grateful. It is recently acquired expertise—[Laughter]. As is my expertise on technical services paid to the UK from Senegal.

Fees for technical services fall within the business profits article of the treaty and can be taxed in Senegal if the fees are attributable to a permanent establishment in Senegal through which the work relating to the fees is performed. That reflects the view of the UK and many other states that business profits should be taxed in the country where the business is carried out. Senegal's

approach to the taxation of services differs from that of the UK. The treaty represents a compromise after extensive discussions, and the provisions governing the taxation of services follow the approach of Senegal in important respects—for example, the taxation of mobile services and insurance.

The shadow Minister asked about DFID. The UK seeks the views of UK businesses and Government Departments on agreements and treaty negotiations on an annual basis. I hope he is reassured that when it comes to overseas development, and in particular capacity building, there is a close working relationship between HMRC and DFID to improve the capability of developing countries when dealing with their tax systems. I am talking not specifically about treaty negotiations but more generally about the capacity to, for example, enforce transfer pricing legislation. A considerable amount of work is done by HMRC and DFID together to provide technical support to developing countries. I strongly support that, and I know that my right hon. Friend the Secretary of State for International Development—a former Treasury Minister—takes great interest in it as well.

There has traditionally been consensus in this country on extending double taxation agreements. The shadow Minister raises perfectly reasonable points, but I hope he is now reassured.

3.18 pm

Rob Marris: I am grateful to the Minister for his comprehensive answer. I am reassured, and I will not seek to divide the Committee on the instrument.

Question put and agreed to.

Draft International Tax Enforcement (Brazil) Order 2015

3.19 pm

Mr Gauke: I beg to move,

That the Committee has considered the draft International Tax Enforcement (Brazil) Order 2015.

This is a standard agreement that sticks closely to the model developed by the OECD and adopted by the UK. It will facilitate exchanges of information on request between the Brazilian and United Kingdom tax authorities and assist HMRC in its tax compliance activities to counter tax avoidance and evasion. I hope the order will have the support of the Committee.

Rob Marris: Will the Minister briefly explain why the order is so different from the other ones?

Mr Gauke: This is a different type of agreement. It is about tax information being exchanged, as opposed to a double taxation agreement, so it seeks to do different things. This order is about assisting tax authorities to enforce the law. On why this is not a double taxation agreement with Brazil, that would require both sides to reach an agreement. At the moment, at least, Brazil is not prepared to enter into an agreement that we believe would make a tax treaty worth while. I hope that will change in future, because it would clearly be beneficial to the UK and to Brazil. In the meantime, my officials remain in regular contact with their opposite numbers in Brazil and monitor the situation closely.

Question put and agreed to.

3.21 pm

Committee rose.

